

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SIMPLY WIRELESS, INC.,

Plaintiff,

vs.

T-MOBILE US, INC. and
T-MOBILE USA, INC.

Defendants.

NO. 21-CV-00597-AJT-JFA

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants T-Mobile US, Inc. and T-Mobile USA, Inc. (collectively, "Defendants"),
by and through their undersigned counsel, hereby move for:

1. Summary judgment of no infringement of any rights in the phrase "Simply Prepaid" in favor of T-Mobile as to Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI (Registration of T-Mobile's Simply Prepaid mark), on the ground that Plaintiff has failed to establish that it owns a valid trademark in the phrase "Simply Prepaid."

2. Summary judgment of no dilution of the Simply Wireless marks in favor of T-Mobile as to Count V (Trademark dilution under 15 U.S.C. § 1125(c)).

3. Summary judgment of no secondary meaning for the phrase "Simply Prepaid" as to Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI

(Registration of T-Mobile's Simply Prepaid mark).

4. Summary judgment of no infringement of the Simply Wireless marks and any rights in the phrase "Simply Prepaid" in favor of T-Mobile as to Count I (Infringement under 15 U.S.C. § 1114), Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count VI (Registration of T-Mobile's Simply Prepaid mark), on the ground that there is no likelihood of confusion.

5. Summary judgment of no disgorgement under 15 U.S.C. § 1117(a), or in the alternative, that the issue of disgorgement shall be tried to the bench.

6. Summary judgment of no willful infringement in favor of T-Mobile as to Count I (Infringement under 15 U.S.C. § 1114), Count II (Infringement under Virginia Code § 59.1-92.12), Count III (Unfair competition, passing off, trade name infringement, trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)), Count IV (Unfair competition, passing off, trade name infringement and trademark infringement under Virginia common law), and Count V (Trademark dilution under 15 U.S.C. § 1125(c)).

The grounds for these motions are set forth in the Opening Brief in Support of Defendants' Motion for Summary Judgment, filed contemporaneously herewith.

Dated: January 18, 2022.

Respectfully submitted,

/s/ Brittany Blueitt Amadi

Brittany Blueitt Amadi (Bar No. 80078)

Joss Berteaud (*Pro Hac Vice*)

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Attorneys for Defendants T-Mobile, US, Inc. and T-Mobile USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2022, I electronically served the foregoing counsel of record as listed on the CM/ECF system.

/s/ Brittany Blueitt Amadi